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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 16, 2002

PETITION OF

COX VIRGINIA TELCOM, INC.

CASE NO. PUC-1999-00110

For approval of relocation  
of network interface device  
to minimum point of entry

ORDER OF DISMISSAL

On June 9, 1999, Cox Virginia Telcom, Inc. ("Cox"), filed with the State Corporation Commission ("Commission") its Petition on behalf of complainants Breedon Company and PGR Real Estate (collectively, "Complainants") in the above-captioned case.<sup>1</sup> Pursuant to a Preliminary Order issued July 30, 1999, Verizon Virginia filed its Motion to Dismiss and Answer on

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<sup>1</sup> The Petition requested that Verizon Virginia Inc. ("Verizon Virginia") be ordered to comply with Rule B7, 20 VAC 5-400-20 (recodified as 20 VAC 5-401-30 (1 and 2)), by relocating the Network Interface Device ("NID") to each living unit in Complainants' Multiple Dwelling Unit ("MDU") properties to the Minimum Point of Entry ("MPOE"); that Complainants be charged no more than reasonable time and materials for the relocation; and that Verizon Virginia convey to Complainants all of the Intrabuilding Network Cabling for a price no greater than its fully depreciated net book value. The Petition requested that Verizon Virginia be ordered to furnish and install on an expedited basis such NIDs at the MPOE that will facilitate cross-connection by Cox and any other CLEC authorized in the future to cross-connection by Cox and any other CLEC authorized in the future to cross-connect on Complainants' premises. The Commission was further requested to determine the reasonable rates and charges for the requested services and facilities to be provided by Verizon Virginia and to enjoin Verizon Virginia from refusing or failing to furnish and install, or impeding the reengineering and reconfiguration, of Complainants' telecommunications facilities as requested herein.

August 25, 1999. Cox filed its Response on September 15, 1999, also as provided in the Preliminary Order.

On May 7, 2001, the Commission denied Verizon Virginia's Motion to Dismiss and directed that the parties pursue negotiations and file a joint statement of remaining issues with supporting information.<sup>2</sup>

The Commission adopted an agreed statement of issues and appointed a Hearing Examiner to conduct further proceedings, pursuant to 20 VAC 5-20-120 A.<sup>3</sup>

Following further negotiations by the parties and with the assistance of the Division of Communications, the parties reported to the Hearing Examiner that the issues identified by the Commission for resolution (the agreed statement of issues filed by the parties) were, in the words of the Hearing Examiner, largely resolved or rendered moot. On July 8, 2002, Cox filed a letter with the Hearing Examiner which, among other matters, requested that its Petition be dismissed without prejudice. Verizon Virginia did not object.

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<sup>2</sup> See Order Directing Joint Statement of Issues to be Filed issued May 7, 2001. Pursuant to an Order Granting Extension, issued June 7, 2001, the parties filed their respective Statement of Issues on July 6, 2001.

<sup>3</sup> Cox presented seven additional issues, which were rejected for hearing. See Order Assigning Hearing Examiner issued August 6, 2001.

On July 22, 2002, the Report of Howard P. Anderson, Jr., Hearing Examiner, was filed. No party filed comments as provided for under 5 VAC 5-20-120 C.

On August 12, 2002, Cox filed Comments on the Hearing Examiner's Report. Cox differs with the account given by the Hearing Examiner of how Cox ultimately developed a method of access to MDU properties using cable television properties held by an affiliate. Nevertheless, Cox does not dispute the report that it has achieved access to such MDU properties. Cox does caution that the issues reported largely resolved and rendered moot may yet be resurrected if Verizon Virginia reverses its agreement to move the demarcation point to the MPOE for garden-style apartments at the property owner's request.

Assuming this issue would arise again, Cox further notes that it does not agree with Verizon Virginia's position, reported by the Hearing Examiner, that Verizon Virginia's union contracts prohibit non-union personnel from participating in the actual move of the wiring to a neutral cross-connect box.

The Commission notes that the Hearing Examiner's Report was made without benefit of a formal hearing and transcript of proceedings. Without such record, it is possible that Cox did not establish with specificity, as its Comments now seek to establish, the precise character of the resolutions reached by the parties. We recognize the tenuous nature of the resolution

reached by the parties, which is indicated by Cox seeking dismissal of its Petition without prejudice, i.e., Cox reserves the right to refile its Petition.

Pursuant to the Commission's Order Assigning Hearing Examiner, the seven additional issues presented by Cox were referred to the Hearing Examiner for determination of whether they were of such industry-wide concern that a rulemaking proceeding should be commenced.<sup>4</sup> The Hearing Examiner noted that

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<sup>4</sup> Cox stated these issues as follows:

1. Is Verizon Virginia legally required to arrange for the removal of demarcations from individual units back to the property's MPOE or to an intervening point designated by the landlord/agent or the MDU within 45 days of receiving such request?
2. In a significant number of existing MDUs, the demarcation point is in each apartment. In this situation, typically Verizon Virginia has a pedestal close to the place where the building wiring emerges from the building, and it is difficult for Cox to gain access to such wiring. In these situations, should Verizon Virginia be required to have a neutral cross-connect box installed to make that building wiring (at each Verizon Virginia pedestal) accessible to Cox or to convert its pedestal into a neutral cross-connect box? If so, how should the costs of such installation be determined, and who should bear those costs?
3. Which, if any, of Verizon Virginia's tariff provisions are applicable to the relocation of demarcations to the MPOE?
4. Are there any Metrics in Case No. PUC-2000-00035 that apply to Verizon Virginia's furnishing MDU access to CLECs?
5. In all new MDU installations, should Verizon Virginia provision the wiring so that there is a neutral cross-connect box at the property or building MPOE and such MPOE is the point of demarcation? Should Verizon Virginia also get the owner of the property to affirmatively agree that the demarcation point should be placed in a particular place (e.g., at each building or at the MPOE of the property)?
6. What is an appropriate price for an unbundled sub-loop? What terms and conditions should apply to leasing such a sub-loop?

with the exception of Cox, no other CLEC has sought relief regarding these seven additional issues.

The Hearing Examiner recommends that no rulemaking is required to address these seven additional issues and that the appropriate remedy for Cox is to file a petition regarding the issues still pertinent. The Hearing Examiner recommends that this matter be dismissed without prejudice.

The Commission is of the opinion that the Report of Howard P. Anderson, Jr., Hearing Examiner, and all of the recommendations therein be approved and adopted.

Accordingly, IT IS ORDERED THAT:

(1) The Report of the Hearing Examiner and all recommendations contained therein are hereby approved and adopted.

(2) This matter is hereby dismissed without prejudice.

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7. Should any decisions made in this case applying to Verizon Virginia also apply to Verizon South Inc.?